

"digital loop carrier" systems, which combine a number of loop transmission paths over a single digital transport facility, may work well for simple voice service but are inadequate for advanced services such as ISDN. When an ILEC receives an order for ISDN or another service with specialized transmission requirements, it does not simply use whatever facilities happen to be in place "as is," but instead locates available facilities (typically end-to-end metallic circuits) that either satisfy the specific transmission specifications for ISDN or can be upgraded to meet those specifications. In order to satisfy the requirements of § 251(c)(3), an ILEC that makes such upgraded loops available for its own use must also provide unbundled, "nondiscriminatory access" to them for other carriers' use.

At a minimum, where facilities exist within the ILEC network that are capable of meeting (or being upgraded to meet) the applicable standards, each ILEC should be required to offer the following categories of loops:

- "2-wire analog voice grade links" will support analog transmission of 300-3000 Hz, repeat loop start, loop reverse battery, or ground start seizure and disconnect in one direction (toward the end office switch), and repeat ringing in the other direction (toward the End user). This link is commonly used for local dial tone service.
- "2-wire ISDN digital grade links" will support digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel. This is a 2B+D basic rate interface Integrated Services Digital Network (BRI-ISDN) type of loop which will meet national ISDN standards.
- "2-wire CSA links" are single-pair twisted copper links without load coils which conform to Carrier Serving Area (CSA) design rules, a subset of the Revised Resistance Design (RRD) rules defined in Bellcore SR-TSV-002275. This type of loop meets emerging standards for high-bit-rate digital subscriber line services.

- "4-wire CSA links" are two-twisted-pair copper links without load coils which conform to the CSA design rules described above.
- "4-wire DS-1 digital grade links" will support full duplex transmission of isochronous serial data at 1.544 Mbps. This T-1/DS-1 type of loop provides the equivalent of 24 voice grade/DS0 channels.

Second, all transport-based features, functions, service attributes, grades-of-service, and installation, maintenance and repair intervals that apply to ILEC bundled local exchange service should apply to unbundled links using the same class of loops in the same geographic area. Since the facilities used in providing an unbundled loop are precisely the same as those used in providing basic local exchange service, there is no justification for providing any lesser quality or functionality or slower installation or repair for unbundled loops than for bundled ones. In the case of an ISDN or CSA loop, the comparison would be to the ILEC's installation interval for end-user services using the same type of loop.

Third, ILECs should be required to permit any customer to convert its bundled service to an unbundled service and assign such service to a competing carrier, with no penalties, rollover, or termination charges to the other carrier or the customer, much in the same way as the Commission has done with "fresh look" policies.<sup>17/</sup> Customers should be subject only to a minimal charge to effect any conversion. The standard time expected from disconnection of a live Exchange Service to the connection of the unbundled element to the new entrant's facilities should be 5 minutes. If the ILEC causes a customer's exchange service to be out of service due solely to its failure for more

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<sup>17/</sup> See n. 10, *supra*.

than 15 minutes, the ILEC should be required to waive the non-recurring charge for that unbundled element. If the competitor has ordered an interim number portability ("INP") arrangement as part of an unbundled loop installation, the ILEC should coordinate implementation of INP with the loop installation.

Fourth, at the requesting carrier's discretion, each loop element should be delivered to the requesting carrier at the point of access over an individual 2-wire hand-off, or in multiples of 24 over a digital DS-1 hand-off, in any combination or order the requesting carrier may specify, or through other technically feasible and economically comparable hand-off arrangements requested by that carrier (*e.g.*, SONET STS-1 hand-off). Where the ILEC utilizes digital loop carrier ("DLC") technology to provision the loop element of a bundled exchange service to an end user customer who subsequently determines to assign that loop element to a competing carrier and receive exchange service from that other carrier via such link, the ILEC should be required to deliver the unbundled loop to the requesting carrier on an unintegrated basis, pursuant to the requesting carrier's chosen hand-off architecture, without a degradation of end user service or feature availability.

Fifth, unbundling of the local loop should occur in such a way that CLECs have access to shared tenant services ("STS"). GST believes that access to STS rights-of-way is an issue overlooked by the 1996 Act which requires Commission guidance.

(b) Local switching capability should be unbundled (§§ 98-103)

As discussed above, GST believes that a "switch port" is an element that should be provided on an unbundled basis. Such unbundling affords CLECs greatest flexibility efficiently to mix their

own facilities and the ILECs' unbundled facilities, and to tailor offerings and business plans accordingly.

(c) Local transport and special access should be unbundled (§§ 104-06)

There can be no doubt that the Commission's proposal to "require unbundling of LEC facilities that correspond to the current interstate transport and special access rate elements," § 105, is technically feasible. These rate elements must be made available on an unbundled basis pursuant to the Commission's *Expanded Interconnection* Rules.

The Commission should clarify that ILECs are required by the 1996 Act to unbundle *all* transport and special access facilities, in any combination that may be requested by another carrier. Thus, for example, on request, an ILEC should provide unbundled interoffice transport facilities and tandem switching, allowing the other carrier to have the ILEC tandem route traffic on CLEC facilities. ILECs must also provide unbundled access to SONET services and any other access service that they now offer or introduce in the future.

(d) Databases and signaling systems should be unbundled (§§ 107-16)

As with interconnection discussed above, competition will benefit from uniform federal guidelines for unbundled access to signaling systems. Signaling systems interconnect through the use of national protocols and operate on a separate national network used in the processing and delivery of messages irrespective of the jurisdictions through which they originate, terminate, or transit. It is imperative that CLECs have access to SS7 signaling networks which are necessary to

deliver messages to all related databases. A prime of example of the need for SS7 access is so that CLECs can complete line information database ("LIDB") messages. Similarly, unbundled access should also encompass E-911, directory assistance, directory listings, and all CLASS features.

With respect to the Commission's inquiry at ¶ 115, GST believes there is unquestionably a federal role in regulating access to customer proprietary network information ("CPNI"). While each state has its own CPNI policies, due to the national nature of the databases which contain and transfer this information, access to the CPNI database should be addressed by this Commission in its forthcoming rulemaking on the subject. Maintaining separate CPNI information for each state in which a carrier does business is a prohibitive economic barrier to a new carrier's entry.

d. Pricing of interconnection, collocation, and unbundled network elements

(1) Commission's authority to set pricing principles (¶¶ 117-20)

GST agrees with the Commission's tentative conclusions in ¶¶ 117-120. Section 251(d)(1) expressly directs the Commission to "establish regulations to implement the requirements of this section." The requirements of § 251 include a number of provisions requiring just and reasonable rates; moreover, §§ 251(c)(2) and 251(c)(3) expressly require that rates be established in accordance with § 252. The Commission therefore has authority to adopt rules implementing the pricing standards contained in § 252(d). This does not imply that the Commission can dictate specific rate levels, since that function is specifically reserved to the states (except when § 252(e)(5) applies); but the Commission's rules may prescribe standards and criteria to be applied by the states. The

Commission can and should, as well, provide guidance to the states in carrying out their responsibilities under § 252.

In ¶ 120, the Commission requests comments regarding jurisdictional separations of costs and revenues relating to co-carrier services. GST strongly agrees that prices, terms, and conditions of § 251 arrangements should not depend on whether a particular service or facility is classified as interstate or intrastate. Further, the accounting treatment of costs associated with these arrangements should be consistent with the classification of the revenues. GST opposes the use of Part 64 cost allocation rules, or similar procedures, for these costs, because those rules use a fully-allocated cost methodology. This methodology is inconsistent with the directive of § 252(d)(1) that costs be “determined without reference to a rate-of-return or other rate-based proceeding[.]” Until such time as the Commission — and the industry — can develop an expediant, inexpensive method of usage-sensitive instrument, an interim bill and keep regime meets these criteria.

(2) The 1996 Act requires that interconnection rates be set at LRIC (¶¶ 121-22)

Under § 252(d)(1), the pricing of interconnection must be :

- (1) “based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection”;
- (2) “nondiscriminatory”; and
- (3) “may include a reasonable profit.”

Section 252(d)(1) clearly requires cost-based interconnection rates. GST urges the Commission to require interconnection rates to be set at the Long Run Incremental Cost (“LRIC”) of an efficient

local exchange carrier rather than the actual costs on ILEC. Simply setting interconnection rates at an ILEC's costs would permit inefficient LECs to profit from their inefficient network configurations while penalizing those carriers whose networks are more efficient. By mandating that the baseline of an efficient local exchange carrier be used in determining LRIC, the Commission will ensure that LECs do not have the incentive to maintain inefficient networks. To the contrary, all carriers will have the incentive to configure their networks in the most efficient manner for competition.

Section 252(d)(1) permits, but does not require, the inclusion of a "reasonable" profit in interconnection rates. LRIC includes recovery of a normal return on capital and, thus, LRIC pricing provides a reasonable profit to the incumbent LEC. Prohibiting the inclusion of a profit beyond that included in LRIC would be consistent with the intent of Congress as expressed in the legislative history of the Act and would promote competition in the provision of local exchange services.

The intent of Congress as evidenced by the legislative history supports the exclusion of profits in excess of those contained in LRIC. Representative Goodlatte, during the House floor debate, stated his support for an amendment which eventually became part of the House Bill and part of the Communications Act. In doing so, he explained that "[t]he bill also prevents interconnection rates from being the source of subsidy as it requires those rates to be just and reasonable before the Bell companies get interLATA relief. It eliminates the Bell companies' ability to use their local

exchange networks . . . to impede their competitors.”<sup>18/</sup> Clearly, Congress did not envision a regulatory regime that permits the incumbent LECs to insulate themselves from the effects of competition by the continued extraction of excess profits made possible by years of enjoying monopoly status.

The Communications Act also unequivocally prohibits including contribution in interconnection rates. As Representative Goodlatte’s statement above makes clear, interconnection rates are not intended to be a source of subsidy for incumbent LECs. The 1996 Act is designed to open the local exchange markets to competition. Concepts such as contribution and guaranteed returns on investment are wholly foreign to the concept of competition. The Commission should reject any requests that these elements be included in interconnection rates, since inclusion of contribution, guaranteed returns on investment, etc. within interconnection rates would be completely inconsistent with the 1996 Act.

Finally, the prohibition upon discriminatory charges protects CLECs from being assessed charges that the incumbent does not assess against independents. Thus, if an incumbent provides meet point billing to independent carriers, and allows them to retain the residual interconnection charge (“RIC”) received from interexchange carriers for providing switched access, it must do likewise with CLECs. Similarly, an incumbent may not assess records charges against CLECs that it does not assess against independents.

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<sup>18/</sup> Cong. Rcd., Aug. 4, 1995, at H8466.



(3) Rate levels (§§ 123-57)

Section 252(d)(1) of the 1996 Act expressly forbids state commissions from approving rates that include historical or embedded costs. Accordingly, the Commission may not establish pricing principles that take such costs into account. GST disagrees with the Commission's suggestion in ¶ 144 that, even though the plain language of § 252(d)(1)(A)(i) specifically prohibits setting rates in the context of a "rate-of-return or other rate-based proceeding," Congress may have left room for the Commission or the states to incorporate quasi-rate-of-return pricing principles in determining costs. It is clear that Congress disfavored rate-based methodologies because of their well-known ability to incent inefficient behavior. Allowing state commissions to include historical or embedded costs as they set cost-based prices under § 252(d)(1) would transfer to new entrants all of the burdens of inefficient incumbent LECs. It is not sensible policy to require one group of competitors to guarantee the revenues and profits of incumbent firms. This would both sacrifice the benefits of efficiencies that new entrants will bring to the market and eliminate any incentive for incumbent LECs to become more efficient. The language in § 252(d)(1)(A)(i) simply cannot be read so narrowly as to eviscerate Congress's decision to prohibit use of rate-of-return pricing methodologies.

Moreover, the Commission should not ignore the growing trend for states to implement incentive-based regulation of incumbent LECs as an alternative to traditional rate-of-return regulation. Incumbents opting for incentive-based regulation forego the right to claim entitlement to recovery of historical costs, embedded costs or revenue requirements in exchange for the flexibility to price their services to meet competition. Incentive regulation recognizes that the advent

of competition should spur incumbent LECs to increase the efficiency of their operations, develop innovative products and focus more on services and price. While they may lose some contribution to the recovery of their historic and embedded costs when they lose customers to competitors, those losses are likely to be more than offset by the overall growth in business they will enjoy if they move aggressively to meet the competitive challenge. In light of the movement of the states away from rate-of-return regulation, it would be truly anomalous for the Commission to turn the clock back by adopting pricing principles that would require states to reinstate rate-of-return costing methodologies.

In order to prevent ILECs from inflating the price of unbundled elements, GST requests that the Commission guard against accounting methods which would otherwise inflate element pricing. While the federal subscriber line charge ("SLC") should be incorporated into unbundled rates for loops, partial loop components (e.g. drops) should not be priced to include the full SLC. Similarly, prices for interconnection and unbundled elements should not be geographically and class-of-service averaged but should be set at the LRIC of such elements. Averaging would distort the true economic costs of providing service. Disaggregation of interconnection and class-of-service should be at a reasonable level to mitigate LEC expense in the administration of pricing.

(4) Interconnection and access to unbundled network elements do not apply to interexchange services (§§ 159-165)

GST concurs with the Commission's interpretation of § 251(c)(2) as set forth in §§ 159-161. A carrier that offers exclusively interexchange service would not be entitled to interconnection under this provision, because it is not engaged in the provision of "telephone exchange service or exchange

access service.” Of course, an interexchange carrier would continue to be entitled to interconnect under the provisions of § 201(a), which are expressly preserved by § 251(i). A carrier that provides both local and interexchange services would be entitled to interconnection under § 251(c)(2) with respect to its local (and exchange access) services, and under § 201(a) with respect to its interexchange services.<sup>19/</sup>

In ¶¶ 164-165, the Commission seeks comment on whether carriers may obtain access to unbundled network elements as a means of originating and terminating *interexchange* traffic, thereby avoiding the payment of Part 69 access charges. GST submits that the Commission could not prohibit a carrier from passing interstate, interexchange traffic over an unbundled network element—that is exactly what the ILECs do in providing exchange access service, and it would turn the statutory scheme on its head if others were prevented from doing the same. Nonetheless, a carrier desiring access to unbundled elements must provide some material elements of the service (in this case, the origination and termination of interexchange calls over local exchange facilities) over its own network; otherwise, there would be no distinction between unbundled access and resale

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<sup>19/</sup> This implies that different rates and terms may apply to interconnection arrangements depending upon the purpose for which they are used. This would seem to be consistent with the reference to “*reciprocal* compensation arrangements” in Section 251(b)(5), which applies only when the interconnecting carrier is *reciprocally* terminating local exchange (or exchange access) traffic. But ILECs must also comply with the requirement of Section 251(c)(2)(C) that interconnection be at least equal in quality to what the ILEC provides to itself. Therefore, if the ILEC itself delivers both local and non-local traffic (such as intraLATA toll calls) to its switches over common trunk groups or other common interconnection arrangements (as is common practice in the industry), it must provide the same opportunity to its competitors. The ILEC may not require segregation of traffic on separate facilities, which would impose additional costs and operating inefficiencies on its competitors.

of wholesale services. GST also agrees with the argument presented in ¶ 164 concerning the nature of an unbundled element. By statutory definition, a network element is composed of “facilities or equipment” and functions performed by identifiable facilities or equipment. A telecommunications carrier cannot use § 251(c)(3) to obtain a rate element of an existing tariffed service (*e.g.*, Part 69 local switching or common line service) at a lower cost; rather, it may obtain switching or loop capacity (for example) which it can use to extend its own network to serve a customer. In order to meet market demand, the carrier using the unbundled element will have to be capable of providing whatever services the customer requires, which likely will not be limited to interexchange calling.

C. **ILECs should not be allowed to withdraw retail offerings to avoid resale obligations (¶¶ 172-77)**

In ¶ 175, the Commission asks whether a LEC can avoid making a service available at wholesale rates by withdrawing the service from its retail offerings. GST urges the Commission not to allow ILECs to abdicate their resale responsibilities. It bears repeating that CLECs are not just competitors of ILECs, but they are also customers. ILECs are fully subject to § 214's existing restrictions on discontinuance of service. ILECs that discontinue services available at wholesale rates should be required to show that competitor-customers will continue to have an economical alternative. ILECs' resale obligations should also extend to promotional and temporarily discounted services offered. Nothing in the language of the 1996 Act permits an ILEC to avoid offering for resale such service, in accordance with the “avoided cost” formula. Discounts and promotions can lead to price squeezes and predatory pricing. Nonstandard rate offerings should be monitored closely.

**D. Obligations imposed on “local exchange carriers” by Section 251(b) (¶¶ 195-244)****1. Restrictions on resale should be discouraged (¶¶ 196-97)**

GST generally agrees with the Commission that restrictions on resale of local exchange services should be discouraged. The statutory language concerning resale restrictions for all local exchange carriers in § 251(b)(1) is virtually identical to § 251(c)(4)(B) applicable only to ILECs. Therefore, a resale restriction imposed by a non-incumbent LEC should be presumed unreasonable, except that any restriction of a type that has been found reasonable for ILECs should be presumed reasonable for other LECs as well.

**2. Number portability should be addressed in a future rulemaking (¶¶ 198-201)**

GST supports the Commission’s intention to address number portability issues in a forthcoming rulemaking. State treatment of number portability is becoming a patchwork of disparate time frames and interim solutions. Compliance with each individual state’s approach to interim number portability increases an entrant’s costs as the carrier builds a regional or nationwide network. Federal guidance on number portability clearly is necessary. The Commission should begin with the premise that Illinois, Georgia, and Maryland have, however, that permanent number portability currently is feasible.

**3. Reciprocal Compensation for Transport and Termination of Traffic (¶¶ 226-44)**

The term “transport and termination of telecommunications” in Section 251(b)(5) must be read in context. This subsection provides that “each local exchange carrier” has the “duty to establish *reciprocal* compensation arrangements for the transport and termination of

telecommunications.” (Emphasis added.) The qualifier “reciprocal” implies that the duty extends only to arrangements between local exchange carriers, not between a local exchange carrier and another telecommunications carrier that is not a LEC; and, therefore, these arrangements only apply to those “telecommunications” that are carried by LECs, namely end-user and carrier access traffic within a LATA. There is no basis in the statutory language for excluding from the scope of this provision arrangements between neighboring, non-competing LECs. Indeed, since the duty imposed by this provision expressly applies to *every* LEC, it would be contrary to the express intent of Congress to exclude from its coverage any reciprocal compensation arrangements between any LECs.

The 1996 Act does not mandate any particular cost recovery structure. Section 251(b)(5) requires reciprocal compensation agreements for origination and termination of calls. Section 252(d)(2)(B) expressly authorizes bill and keep arrangements. GST urges the Commission to adopt regulations specifying that on an interim basis, CLECs are entitled to exchange traffic on a bill and keep basis. Bill and keep is an appropriate interim structure for reciprocal compensation for several reasons:

- The costs of developing systems to track and bill for traffic exchanged between ILECs and new entrants will be significant, and may discourage entry by smaller competitors.
- In the early months of competition, traffic exchanges will likely be small relative to the costs of developing racking and billing systems.
- Since there is little experience with local competition, there is no conclusive evidence that traffic exchange will be significantly imbalanced.

- Establishing compensation rather than interim bill and keep will distort competition by encouraging new entrants to focus market entry strategies on niches that exploit compensation levels (e.g., focusing on customers with high in-bound volumes) rather than offering competitive services tailored to the broader marketplace.

Of course, parties should be free to negotiate LRIC-based compensation at any time.

Until LRIC based pricing is instituted, access and compensation charges should follow the customer. For example, carriers should bill and keep landline, wireline, interim number ported, and Function Group A calls that they terminate, which are routed to or from them via the ILEC network.

The Commission also requests comment on whether reciprocal compensation arrangements should be segregated into “transport” and “termination” elements for compensation pricing purposes. Nothing in the statutory language or the legislative history, however, supports such a distinction. To the contrary, § 252(d)(2)(A)(i) refers to the “recovery . . . of costs associated with the transport and termination . . . of calls[,]” while § 252(d)(2)(A)(ii) refers to “a reasonable approximation of the additional costs of *terminating* such calls,” (emphasis added), suggesting that Congress considered the transport and termination functions to be equivalent or at least substantially overlapping.

However, there is an important distinction between reciprocal compensation arrangements and charges for access to unbundled elements. With respect to access to unbundled network elements, the requesting carrier specifies the particular ILEC facilities and network elements it wishes to access, and integrates those facilities and elements into its own network. In a reciprocal compensation arrangement, however, the carriers are providing reciprocal *services* (i.e., termination of calls) rather than providing access to particular, identifiable facilities. Because an interconnecting

carrier does not specify the facilities that will be used to transport or terminate its traffic, the charges for this function do not depend on the other carrier's choice of facilities.

Some ILECs have sought to subdivide "transport and termination" into subcategories as a means of applying non-reciprocal or asymmetric rate structures to these arrangements. For example, ILECs in New York and Maryland were able to persuade State regulators to approve on an interim basis "two-tier" termination rate structures under which one rate applies for traffic routed through an ILEC tandem switch, while a lower rate applies for traffic directly trunked to an ILEC end office. Because non-incumbent LECs typically do not operate separate "tandem" and "end office" switching hierarchies, these compensation rate structures are inherently non-reciprocal.<sup>20/</sup>

Further, a two-tier rate structure is not consistent with the pricing standard of § 252(d)(2)(A), which requires that rates be designed to allow "mutual and reciprocal recovery of costs" based upon "a reasonable approximation of the additional costs of terminating such calls." The statutory standard requires a single rate structure that is not dependent under a two-tiered rate structure on the particular network architecture or routing chosen by either carrier. Taken to an extreme, a carrier could maximize its compensation revenues by adding unneeded tandem switches, which is clearly not a desirable outcome. Also, a rate structure tailored to the network design of one carrier would almost certainly not provide "mutual and reciprocal" recovery to the other carrier. For example, the

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<sup>20/</sup> In New York, the "tandem" rate does apply reciprocally to traffic terminated by the non-incumbent LEC, but the latter carrier is also required to offer alternative interconnection options that would allow the ILEC to reduce its termination cost. In Maryland, however, the lower "end office" rate applies to all traffic terminated by a non-incumbent LEC.



two-tier rate structure approved in Maryland is designed to allow the ILEC to recover costs associated with its tandem switches and the inter-office trunks connecting those tandems to end office switches; but it makes no allowance for the additional backhaul costs that will be incurred by a new entrant that does not have separate tandem switches.<sup>21/</sup>

As discussed in more detail below, the requirement that reciprocal compensation rates be based upon "a reasonable approximation of the additional costs," coupled with the prohibition on requiring actual cost studies, dictates that these rates be based on the incremental costs of an efficient provider, not on the "actual" or "historical" costs of any particular provider. Economic analysis suggests that, over time, all providers within the same market will tend to adopt the most efficient technology due to their self-interest in minimizing their costs and maximizing their profits. Therefore, the long-term efficient cost of transporting and terminating traffic should be identical for all providers, based upon their adoption of the most efficient technology, even if their short-term costs based upon today's technology are different; and the Commission should seek compensation structures that reinforce, not interfere with, efficiency incentives.

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<sup>21/</sup> Typically, CLECs use a single integrated tandem/end office switch to serve a geographic area comparable to that served by an ILEC tandem and multiple end offices. The use of a single centralized switch requires the deployment of additional transport facilities to bring traffic from all points within the service area to the switch, but the cost/capacity relationships of modern switching and transport technologies make this a more efficient design than deploying multiple switches with less transport. Therefore, although CLECs do not incur the tandem switching costs that the ILECs do, they incur additional transport costs to connect all points on their network to the centralized switch.

An artificial distinction between “tandem” and “end office” termination, or any other rate structure that seeks to distinguish “transport” from “termination,” would eliminate the reciprocity required by Congress and give ILECs an opportunity to tilt the balance of payments through their network design decisions. For example, if (as suggested in ¶ 231) dedicated transport links between a carrier’s switch and the meet-point were to be priced on a flat-rated basis, the carrier would then have an incentive to route traffic through a switch far away from the meet-point (regardless of whether this would be economically efficient) in order to increase its revenue from dedicated transport (and correspondingly increase its competitor’s expenses). In order to avoid uneconomic incentives of this nature, the Commission should interpret “transport and termination” as an indivisible unit that will be subject in its entirety to reciprocal (and, as discussed below, symmetric) pricing.

In response to ¶¶ 232-233, GST believes that Congress was unambiguously clear in establishing different pricing standards in §§ 252(d)(1) and 252(d)(2), and there is no reasonable argument that the statute could be construed to treat these two standards as interchangeable. Facilities used for traffic exchange pursuant to § 251(b)(5) cannot be made subject to rates based on the § 252(d)(2) pricing standard.

The Commission (¶ 234) requests comments on a variety of issues relating to implementation of § 252(d)(1). GST urges the Commission to adopt rules requiring that reciprocal compensation rates be based upon a reasonable estimate of the LRIC, to a provider using the most efficient available technology, of terminating traffic received from other providers on a LATA-wide basis.

The LATA is the reasonable geographic unit to use for this purpose—a larger unit would be unrealistic because the Bell Operating Companies are prohibited, at least for the time being, from transporting traffic beyond a LATA boundary; while smaller units would be unrealistic because ILEC networks within a LATA generally are operated as an integrated unit. ILECs currently interconnect within their own networks and with neighboring ILECs for the transmission of traffic on a LATA-wide basis, so §§ 251(c)(2)(C) and 251(D) prohibit them from requiring other carriers to interconnect on any less favorable basis.

Section 252(d)(2)(B)(ii) prohibits the Commission and any State from conducting “any rate regulation proceeding” to determine transport and termination costs, or from requiring the performance of any cost studies. This suggests that Congress intended for compensation prices to be set at economically relevant costs, rather than based on artificial regulatory mechanisms such as separations, revenue requirements or a carrier’s embedded investment. This conclusion is reinforced by the reference to “additional costs” in § 252(d)(2)(A)(ii), which clearly seems to incorporate the economic concept of efficient pricing based on marginal costs. This is a sound policy choice, because use of efficient prices will provide all carriers with an economic incentive to modernize their networks and adopt the most efficient technology, as well as to use the most efficient means available to terminate their competitors’ traffic.

The Commission’s rules therefore should require that compensation for transport and termination of traffic under § 251(b)(5) not exceed a reasonable estimate of the incremental cost that would be incurred by a provider using optimal technology. Rates may not be based on either

interstate or state access charges, because these rates are fundamentally based on rate-of-return calculations rather than estimates of economic costs. Likewise, rates may not be based on the typical ILEC incremental cost study which use the ILECs actual costs and network configuration to estimate costs. Studies are based on the incumbent's costs, generally assuming the existing network design will remain fixed in perpetuity, and are inconsistent with the Act's requirement for an approximation of the relevant economic cost.

GST believes that the requirement of symmetry in reciprocal compensation arrangements is one of the most important issues raised in the *Notice*. Symmetry, as defined in ¶ 235, is not only consistent with the provisions of § 252(d)(2), but in fact is compelled by them. Moreover, symmetry is essential if new entrants are to have an opportunity to offer local exchange service on an economically viable basis.

As discussed in the preceding sections, Congress required that reciprocal compensation rates be "mutual and reciprocal" and based on a "reasonable approximation of additional costs," and expressly prohibited any requirement of actual cost studies. These interrelated provisions indicate Congress' intention that optimal economic costs, rather than actual or historical costs, should be used in setting these rates. While actual costs may vary from one carrier to the next, the optimal economic cost of performing the transport and termination function is the same for all carriers operating within the same geographic area. Only symmetric rates are "mutual and reciprocal," and only such rates are consistent with the provisions of § 252(d)(2).

In ¶ 236, the Commission suggests that symmetric rates would be easier to manage than asymmetric rates. "Setting asymmetric, cost-based rates might require evaluating the cost structure of nondominant carriers, which would be complex and intrusive." This observation is correct, but also incomplete. Investigations into the cost structure of new entrants would not only be administratively burdensome, complex, and intrusive, but also would violate the specific prohibition of § 252(d)(2)(B)(ii).<sup>22/</sup>

Asymmetric rates would place an intolerable burden on new entrants in the local exchange market. Asymmetric rates would favor the ILECs, because of the greater bargaining power and greater access to information of these companies. Further, any imbalance in compensation would have a disproportionate impact on new entrants. The ILECs today serve nearly 100 percent of customers, and they will likely continue to have the largest share of the market for years to come. Therefore, ILECs will be able to complete the majority of calls placed by their customers entirely over their own networks, and will incur reciprocal compensation charges only on a small fraction of their calls. By contrast, new entrants will incur these charges on the vast majority of their traffic.

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<sup>22/</sup> The Commission suggests (¶ 236) that new entrants "may possess a degree of market power over the incumbent LEC" by controlling the access line needed to terminate a particular call, and therefore "may have an incentive and the ability to charge high rates to the incumbent . . . ." Although a rule requiring symmetric rates would eliminate this concern, the Commission is mistaken in characterizing control of an access line as "market power." If a new entrant did charge "high rates" for transport and termination of traffic on its network, the ILEC could seek to avoid paying these charges by marketing its local exchange services directly to end users and "winning back" the customers who were using the competitor's services. New entrants do not have captive customers, and therefore cannot exercise market power.

Any asymmetry in the rate levels would have a much greater proportionate impact on the new entrant's revenues and costs than on the ILEC's.

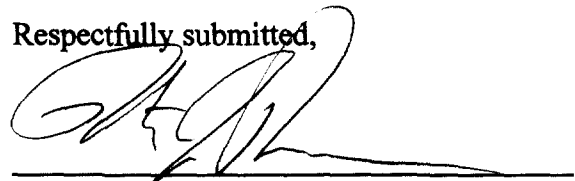
The supposed disadvantages of rate symmetry identified in ¶ 237 are illusory. First, the Commission suggests that different networks may have different cost characteristics, therefore requiring different rates. It would be poor policy to set rates based on the individual cost characteristics of particular customers' networks; any attempt to do so would also entail lengthy, complex, and expensive administrative hearings. Setting symmetric rates based on the costs of optimal technology will give all carriers an incentive to use the most efficient network design and to reduce their costs to the optimal level. Also, the Commission expresses concern that an ILEC "might be able to use its bargaining power to extract a symmetrical rate higher than relevant costs . . . ." This is a valid concern, but it is not a disadvantage of symmetry, because the same problem could occur even if rates were not required to be symmetric. The answer to this concern, as suggested above, is to require that the symmetric rate level be justified by a reasonable estimate of the optimal economic cost of transport and termination of traffic.

For the foregoing reasons, the Commission's rule should interpret § 252(d)(2) as requiring symmetric rates for transport and termination of traffic, and should require States conducting arbitration or reviewing BOC statements of generally available terms to establish rates consistent with this requirement.

### III. CONCLUSION

GST applauds the Commission on its undertaking of the many complex, detailed issues encompassed in the *NPRM*. As with all cutting edge, technological issues, the Commission faces the daunting task of fashioning regulations to implement arrangements which will only change over time. By setting minimum technological standards for interconnection and unbundling, the Commission will allow carriers the flexibility to find mutually agreeable interconnection agreements with available technology. In addition, the Commission will better serve the public interest by ensuring that local competition will be available to consumers without delay. For local competition to mean anything, however, the Commission must also set pricing standards based upon long run incremental cost. Only with such pricing standards will CLECs truly be able to compete with entrenched ILECs.

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